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HOUSE JOINT MEMORIAL 94

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

EDDIE CORLEY

A JOINT MEMORIAL

URGING COUNTY CLERKS TO DEVELOP A PROCESS TO IDENTIFY AND REMOVE UNCONSTITUTIONAL AND UNENFORCEABLE DISCRIMINATORY COVENANTS FROM THEIR RECORDS AT THE TIME THAT REAL PROPERTY IS BOUGHT OR SOLD.

WHEREAS, the state of New Mexico prides itself on being a state where many different cultures and people can peacefully coexist; and

WHEREAS, one of the most important precursors to peaceful coexistence is freedom of economic opportunity; and

WHEREAS, one of the most important components of the freedom of economic opportunity is the right to inherit, purchase, lease, sell, hold and convey real property; and

WHEREAS, unfortunately, in the not so distant past, the right to inherit, purchase, lease, sell, hold and convey real property in New Mexico was subject to discriminatory restrictive

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1 covenants that prohibited people of certain races from owning,  
2 using or occupying real property; and

3 WHEREAS, the following example of such a discriminatory  
4 restrictive covenant was taken from a deed recorded in Santa Fe  
5 county on May 31, 1940 and that language still existed in that  
6 deed when the property was sold in 1996:

7 "No persons of any race other than the Caucasian race shall  
8 use or occupy any building or any lot, except that this covenant  
9 shall not prevent occupancy by domestic servants of a different  
10 race domiciled with an owner or tenant"; and

11 WHEREAS, the United States supreme court, in Shelley v.  
12 Kraemer (1948) 334 US 1, 92 L ed (Adv 845), 68 S Ct 836, 3 ALR2d  
13 441, held, almost fifty years ago, that enforcement of such  
14 discriminatory restrictions violates the equal protection  
15 provisions of the fourteenth amendment to the constitution of  
16 the United States; and

17 WHEREAS, such discriminatory and offensive restrictions are  
18 repugnant to the values and policies of all thoughtful and  
19 reasonable New Mexicans; and

20 WHEREAS, such discriminatory restrictions are contrary to  
21 the public policies of the United States, the state of New  
22 Mexico and each and every county, municipality, town and village  
23 in New Mexico; and

24 WHEREAS, references to such antiquated discriminatory  
25 restrictions should be identified and the unconstitutionality

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1 and unenforceability of such covenants should be fully explained  
2 to each holder of an interest in any real property that was once  
3 subject to such covenants;

4 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
5 STATE OF NEW MEXICO that the clerk of each county be urged to  
6 develop a process to identify and remove, if possible,  
7 unconstitutional and unenforceable discriminatory covenants from  
8 their records at the time that any real property originally  
9 subject to such a covenant is bought or sold; and

10 BE IT FURTHER RESOLVED that the clerk of each county be  
11 urged to develop literature, to be distributed whenever real  
12 property is bought or sold, that would explain that these  
13 discriminatory covenants have been determined to be  
14 unconstitutional and unenforceable; and

15 BE IT FURTHER RESOLVED that copies of this memorial be sent  
16 to the clerk of each county, the president of the county clerk's  
17 affiliate, the director of the Martin Luther King, Jr.  
18 commission and the New Mexico real estate commission.